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March 26, 2015

Honorable Joseph F. Bianco
United States District Court Judge
Eastern District of New York
100 Federal Plaza
New York, New York 11722

Re: United States v. Tommy Constantine
Criminal Docket No. 13-607(S-1)(JFB)

Dear Judge Bianco:

Today, the Sunday Daily News ran a four-page expose detailing, not only the allegations in the Indictment, but reporting substantially prejudicial information that required my last minute request for permission to address the Court before jury selection. An internet version of the article is attached. With the Court's permission, we would like to present the actual newspaper article for the Court's review tomorrow. Usually, such matters can be properly handled during voir dire, we submit, this is not the case here. We respectfully submit that the impact of this Daily News article, written on the eve of jury selection, raises the substantial likelihood that the jury pool has been tainted by the slanted presentation of the charges, and, as important, by the inclusion of inflammatory and prejudicial information.

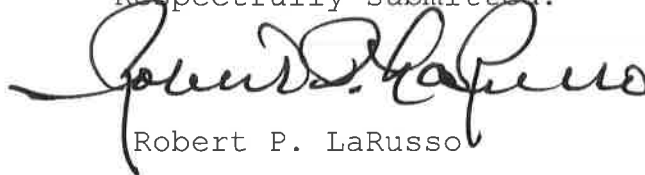
In addition to the extensive coverage of the charges, presented more as accusations than as fair reporting of the charges, the reporters choose to include inflammatory rhetoric from John Kaiser, a former Suffolk County police officer slated to testify for the government in this prosecution. Highlighted

in a separate bold portion of the article, the witness is permitted to rant about being "determined to bring Kenner and Constantine to justice because he convinced several friends and family members to invest with them. Kaiser even persuaded his wheel-chair bound brother to invest \$400,000. "I had my own house foreclosed on," Kaiser said in 2013. 'My cop buddies had their whole life savings in this. I worked too hard to let these couple of scumbags get away with this.'" Interestingly, the reporters choose to withhold documented allegations that Kaiser was himself involved with Kenner and personally compensated for almost his entire investments.

Furthermore, the article details the ongoing obstruction investigation recently disclosed during our last court appearance on April 22, 2015, and mentions, again in a bolded and highlighted section, that "Constantine grew up in a Chicago suburb, where he was known as Tommy C. Homovitis; he changed his name after pleading guilty to drug charges in Illinois more than 20 years ago." Homovitis was Mr. Constantine's legal name, not an alias, and was legally changed for reasons unrelated to his drug conviction. Regardless, the former name has absolutely nothing to do with this prosecution and the drug conviction would be inadmissible even if Mr. Constantine choose to testify.

Based upon the inflammatory and prejudicial nature of the Daily News reporting, we respectfully request permission to address the Court and seek remedial action, including postponing jury selection, and possibly transferring the case to Brooklyn for trial, a venue removed from Suffolk County where Kaiser and "[his] cop buddies," lived and worked.

Respectfully submitted.



Robert P. LaRusso

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THE ICEMEN COMETH, Daily News, Sunday, 04/26/15.

Former NHLers finally get day in court as alleged bilkers of millions go to trial in fraud case

TERI THOMPSON, MICHAEL O'KEEFFE and NATHANIEL VINTON



CENTRAL ISLIP - The real tragedy of the case of the missing hockey fortunes is the tax those vanished millions had already levied on the brains and bodies of the men who earned their living crashing through ice rinks from Russia to Quebec, from Sweden to Madison Square Garden.

They were told their investments would grow in a series of real estate deals in Hawaii and Mexico -- the kind of sunny, exclusive spots that pro athletes dream of escaping to after the long, violent winters of pro hockey finally gave way to retirement.

Instead, nearly 20 former and current NHL pros may have lost their savings in a dizzying financial scam that is the subject of a federal criminal trial starting tomorrow on Long Island. Exactly how many athletes' nest eggs vanished is one of many facts to be determined at the Alphonse M. D'Amato United States Courthouse once testimony begins.

Jury selection starts Monday in the fraud case against a pair of mysterious playboys who pleaded not guilty in 2013 to nine counts of wire fraud, conspiracy and money laundering charges.

Court documents indicate up to \$30 million is at stake, some of it locked up in private jets, fancy homes and a storied Baja golf resort.

The accused con men at the center of it all, Phil Kenner and Tommy Constantine, turned on each other long ago but remain co-defendants in an indictment that was revised just this week, more tightly focused for what could be a six-week trial.

Jurors will hear prosecutors and FBI agents accuse Kenner and Constantine of diverting investor deposits for own their personal gain.

The government says it has evidence that money was steered toward personal debts and pet projects such as Kenner's tequila company and, in Constantine's case, to buy race cars and hire Playboy models to attend car races. Attorneys for both men say their clients are innocent. And there are indications that some of the hockey players may still be in the defendants' corner.

In an 11th-hour pretrial plot twist, the government revealed this past week that Kenner, who has been jailed in New York since his 2013 arrest, recently became the subject of a still-ongoing obstruction of justice probe based partly on a secretly recorded jailhouse conversation.

"The recent disclosure that Kenner has been engaged in efforts to obstruct the present prosecution is additional evidence of Kenner's long-standing practice to obstruct court proceedings by falsifying evidence and suborning perjury," wrote Constantine's attorney, Robert LaRusso, in a letter to U.S. District Court Judge Joseph F. Bianco on Thursday.

"We anticipate cross-examining Mr. Kenner on these issues during trial."

It's a hard fall for Kenner, a Buffalo native and former hockey player at Rensselaer Polytechnic Institute, who lived the high life as a self-styled "lifestyle coach" to the hockey players.

Since his legal saga began in 2009, Kenner has at a times claimed that he is the true victim and other witnesses have conspired against him in an elaborate smear.

'This isn't a complicated financial scheme. If any funds solicited were used for personal gains - cars, houses, real estate - that's all the government has to show. It's no Bernie Madoff case.' PRIVATE INVESTIGATOR BILL CALLAHAN

"This is the most complicated criminal case I've seen in 30 years of practice," said Kenner's attorney, Richard Haley, in a status conference Wednesday before Bianco.

Bill Callahan, a former federal prosecutor and president of the private investigation company UNITEL, disagrees. The government, having spent six years sifting through thousands of pages of documents, taped conversations and the massive civil litigation filed among the parties involved, produced a streamlined indictment, says Callahan.

"This isn't a complicated financial scheme," Callahan said. "If any funds solicited were used for personal gains - cars, houses, real estate - that's all the government has to show. It's no Bernie Madoff case."

The Daily News began reporting on the matter in 2009, after 19 professional hockey players sued Ken Jowdy, Kenner's former partner and the developer of a world-class golf resort in Cabo San Lucas, airing the bizarre claim that \$25 million they'd entrusted to Jowdy -- through Kenner -- had been squandered on porn stars and escorts.

It soon emerged that Kenner was behind that lawsuit, which was ultimately withdrawn. Jowdy, meanwhile, completed work on the resort - called Diamante Cabo San Lucas, featuring an adjacent course designed by Tiger Woods, who also has a home on the property - despite threats Jowdy says made him fearful for his life. Jowdy is expected to testify at the trial.

According to the indictment, Kenner and Constantine told the players their money was being invested in the golf resorts, a prepaid credit card company called Eufora, and something called the "Global Settlement Fund" -- a purported legal defense fund designed in large part for the attacks on Jowdy.

Other witnesses may include some alleged victims of fraud. They include New York cops, their families, and some other non-athletes, but the chief victims are former and current NHL players.

Among them is former Ranger and Islander Bryan Berard, an All-Star defenseman and No. 1 draft pick, best known for returning to the Rangers after losing his eye in a grisly on-ice accident in 2000.

"Many of the players are either broke or don't want to spend any more money on legal fees," Berard told the Daily News in the summer of 2013. By the time indictments were handed up earlier that year, Berard had already devoted himself "trying to figure out where the money is and how it was taken."

Multiple factions have aired accusations of threats, signature forgeries and lawsuits used as diversionary tactics. But what's clear is that a group of victims now wonders if the investments they thought would ease their retirement are destined for more than courtroom exhibits.

On Monday, prospective jurors may be asked by Bianco if they can be fair and impartial in a trial involving professional athletes and their financial advisers.

That's based on two questions suggested by a prosecution team from the U.S. Attorney's Office for the Eastern District of New York led by Assistant U.S. Attorney James M. Miskiewicz.

The two defendants may be facing lengthy prison sentences if they are convicted. Constantine, who changed his name from Tommy Hormovitis, has a prior criminal record (he pleaded guilty to drug charges in Illinois in the early 1990s).

Since last year he's been out on bail, monitored by an electronic ankle bracelet and limited to travel in Maricopa County, Arizona. (Last week Constantine sought and received permission to travel to a monastery in New Mexico with his mother and sister. The judge approved the modifications to the bail conditions.)

Kenner has been treated with less deference. Whatever he told a confidential informant who was taping him for the FBI was enough to prompt the government to move Kenner from a jail in Queens to one in Brooklyn, and for Constantine's attorney to seek to have his client charged separately from his former wingman.

LaRusso's letter reminded Judge Bianco that the feds are trying to determine if Kenner tried to obstruct justice by derailing the government's case from the Queens detention facility where he has been held for more than a year.

The government has refused to provide additional details about the investigation, LaRusso said, but Kenner and his associates have a history of backdating documents and forging signatures, according to previous and current court filings.

"Kenner's present efforts to obstruct these proceedings and his past efforts to falsify testimony and suborn perjury are additional grounds for seeking a severance and being tried separately," LaRusso wrote.

LaRusso said the ties that bound Kenner and Constantine snapped a long time ago. Kenner's attorney Haley, he wrote, has already said the alleged con man will blame Constantine for misappropriating player contributions to the Global Settlement Fund. LaRusso said his defense will include proof that Kenner diverted money the players had invested into Constantine's prepaid credit card company into his own pocket.

The letter also claimed Kenner teamed up with several associates -- now probable witnesses -- to wrest control of the credit card company from Constantine.

Callahan, the private investigator, says he is surprised one of the defendants didn't agree to cooperate with the government.

"Most people accused of these kinds of crimes preserve an option to cooperate," Callahan told The News. "We call it having a dime in your pocket to make the call."

Short of a last-minute plea agreement, the trial will proceed. One of the parties watching the trial closely will be the National Hockey League (the NHL Players Association declined to comment on the case). Gary Bettman, the NHL commissioner, told The News on Friday that the league would be monitoring the trial.

"There's not much we can do about the investments our players make," Bettman said. "We hope they aren't victimized by people." NOTE: New York attorney Tom Harvey, whose legal analysis appears in the Daily News, at one time represented Ken Jowdy as co-counsel with Louis Freeh, the former FBI Director. Harvey is no longer involved in the case.

DEFENDANTS

PHIL KENNER

The former financial adviser and self-proclaimed "lifestyle coach" was indicted by a federal grand jury in October of 2013 on fraud charges. Prosecutors say Kenner stole as much as \$30 million from retired NHL players, Long Island cops and an electrical contractor in a decade-long scheme the Justice Department said "stretched from Hawaii to Mexico to the East End of Long Island." Kenner grew up in the Buffalo area and played hockey at Rensselaer Polytechnic Institute, where he befriended ex-NHL star Joe Juneau, who later introduced him to other professional hockey players. Kenner was the best man at Juneau's wedding, but the former NHL star later sued his longtime friend, accusing him of withdrawing funds from Juneau's brokerage accounts for his personal use. Kenner has pleaded not guilty to the charges and has claimed that he is the victim of a smear campaign.

TOMMY CONSTANTINE

Kenner's co-defendant and longtime associate is a former race car driver who founded the Playboy Racing Team in 2006 and later married former Playmate Sarah Bowers. Constantine grew up in a Chicago suburb, where he was known as Tommy Hormovitis; he changed his name after pleading guilty to drug charges in Illinois more than 20 years ago. Constantine founded Eufora, a prepaid credit card company prosecutors say was part of the scheme to defraud the hockey players, cops and others. Prosecutors say Kenner and Constantine are partners in crime, but their loyalty toward each other ended by the time they were arrested. Constantine's attorney Robert LaRusso has filed three motions asking the court to split the case, arguing that Kenner and Constantine will turn on each other at trial. Constantine has also pleaded not guilty.

WITNESSES

BRYAN BERARD

Berard was playing junior hockey in the mid-1990s -- and considered a top NHL prospect -- when Kenner convinced him to entrust the financial adviser with the riches he would later make as an NHL star. Berard, selected by the Ottawa Senators with the top pick of the 1995 draft, considered Kenner a friend for many years but eventually became suspicious. Berard, who estimates Kenner stole \$3 million from him, teamed up with former New York police officer John Kaiser, another alleged victim of the scheme, to find out where the money went. They reviewed thousands of pages of documents and found their names had been forged on wire

transfers, investments and other papers. The two men later traveled across the U.S. to meet with other hockey players and convince them that Kenner and Constantine had scammed them out of millions.

JOHN KAISER

The former New York cop became suspicious of Kenner and Constantine in 2010 after reading stories about the alleged fraudsters' legal battles with NHL players in the Daily News. Kaiser has said he is determined to bring Kenner and Constantine to justice because he convinced several friends and family members to invest with them. Kaiser even persuaded his wheelchair-bound brother to invest \$400,000. "I had my own house foreclosed on," Kaiser said in 2013. "My cop buddies had their whole life savings in this. I worked too hard to let these couple of scumbags get away with this."

PLAYERS All of whom sued Ken Jowdy

ALIGNED WITH PROSECUTION?

ETHAN MOREAU

The former Edmonton Oilers captain who led the team to the 2006 Stanley Cup Final sued Constantine in Arizona federal court in 2008, claiming the convicted drug dealer used \$290,000 Moreau gave him to purchase two Las Vegas condominiums to buy the properties for himself instead. Constantine countersued, and the suits were dismissed in 2010, according to court filings. Moreau appears to aligned with Berard and the prosecutors.

MICHAEL PECA

The former Islanders defenseman is one of 20 hockey players who accused Constantine in a 2010 lawsuit of stealing more than \$1 million they invested in Eufora. The suit claims Constantine used the prepaid credit card company's funds as a "personal ATM." Peca is aligned with the prosecution.

STEVE RUCCHIN

Former Mighty Ducks and Rangers center was also among the players who sued Jowdy, claiming he had squandered his investment on strippers and escorts. He is now aligned with the prosecution.

TURNER STEVENSON

Retired right wing who won a Stanley Cup with the Devils in 2003 is among the players who claimed in a 2009 lawsuit that Jowdy had blown his money on party girls for his Major League Baseball pals. Considered aligned with the prosecution.

ALIGNED WITH KENNER?

GREG DEVRIES

The former Rangers defenseman who won the Stanley Cup with the Colorado Avalanche in 2001 was among the players who claimed in the 2009 lawsuit that Jowdy had blown their investment on porn stars and party girls. Despite the criminal charges filed against his former financial adviser, DeVries continues to communicate with Kenner's supporters.

MATTIAS NORSTROM

Swedish defenseman who spent most of his career with the Los Angeles Kings was among the players who alleged in a lawsuit that Constantine had stolen money the players invested in Eufora. Norstrom, however, appears to support Kenner.

ALIGNED WITH CONSTANTINESERGEI GONCHAR

The Montreal Canadiens power-play specialist is one of 19 Kenner clients who sued Diamante developer Ken Jowdy in 2009, claiming the \$25 million Kenner invested for them in Diamante was blown on "porn stars, escorts, strippers, (and) party girls" Jowdy hired to entertain Roger Clemens, Reggie Jackson, Pete Rose, Joe Morgan and other pals.

Gonchar withdrew his lawsuit against Jowdy, and remains aligned with Constantine, but the lawsuit drew the interest of federal prosecutors and led to the criminal charges against the race car driver and his codefendant. Jowdy currently has a pending lawsuit against Gonchar in California for malicious prosecution.

UNALIGNED

OWEN NOLAN

Nolan played in the NHL for 18 seasons, primarily with the Quebec Nordiques and the San Jose Sharks. An arbitrator awarded Nolan \$2.5 million after the Belfast-born right wing accused Kenner of fraud and breach of fiduciary duty. Nolan claimed Kenner had used funds from the athlete's line of credit for his own investments and to make interest payments on lines of credit he had opened on behalf of other clients.

DMITRI KHRISTICH





Khristich, who spent most of his NHL career with the Washington Capitals, was one of the players who sued Jowdy, but his association with Kenner and Constantine was costly. He was broke when he returned to his native Ukraine, despite spending 13 years in the league. He is a possible witness in the trial.

JASON WOOLLEY

Jason Woolley, who played for the Red Wings, Sabres, Penguins, Panthers and Capitals, was also an alleged victim. He filed for bankruptcy in September of 2012 and listed among his assets his silver medal from the Olympics and two guinea pigs. Woolley listed debts of \$212,774.

JOE JUNEAU

Prosecutors allege the seeds of the fraud date to the late 1980s, when Kenner and Juneau were college roommates before Juneau went on to have a long playing career with the Boston Bruins, the Washington Capitals and other NHL teams. Kenner used the connection to start an investment firm catering to pro players, according to the prosecution.

 One-time partners Phil Kenner (l.) and Tommy Constantine go on trial this week, charged with scamming investors — many of them former NHL players and New York cops — of as much \$30 million.  Bryan Berard literally gave his right eye playing professional hockey only to see what he says is \$3 million of what he earned stolen by investors Phil Kenner and Tommy Constantine. BRYAN SMITH/DAILY NEWS  

MICHAEL PECA  SERGEI GONCHAR  JOE JUNEAU  OWEN NOLAN
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